



Order under Section 69 Residential Tenancies Act, 2006

Citation: CAPREIT LIMITED PARTNERSHIP v Fontenelle, 2023 ONLTB 15216

Date: 2023-01-19

File Number: LTB-L-025738-22

In the matter of: 711, 500 MURRAY ROSS PKY
TORONTO ON M3J2Z3

Between: CAPREIT LIMITED PARTNERSHIP Landlord

And

Renata Fontenelle and Sylvia Fontenelle Tenants

CAPREIT LIMITED PARTNERSHIP (the 'Landlord') applied for an order to terminate the tenancy and evict Renata Fontenelle and Sylvia Fontenelle (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on January 5, 2023.

Only the Landlord's Legal Representative, Jason Paine, attended the hearing.

As of 2:42 p.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,887.38. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$62.05. This amount is calculated as follows: \$1,887.38 x 12, divided by 365 days.
5. The Tenants have paid \$10,135.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2023 are \$9,179.28.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.

9. I have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants, and find that the Landlord did attempt to negotiate repayment of the arrears of rent. In making this finding I considered the Landlord's Legal Representative's submissions that the Landlord reached out to the Tenants on multiple occasions. The Landlord's Legal Representative testified that he spoke to one of the Tenants prior to the hearing and they informed him that Tenants were not in a position to pay ongoing rent or to commit to a payment plan. As the Tenants did not attend and no other circumstances were presented to me, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$9,365.28 if the payment is made on or before January 30, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after January 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before January 30, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,788.15. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$62.05 per day for the use of the unit starting January 6, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before January 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 31, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before January 30, 2023, then starting January 31, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 31, 2023.

January 19, 2023
Date Issued

Kathleen Wells
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on July 31, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before January 30, 2023

Rent Owing To January 31, 2023	\$19,314.28
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,135.00
Total the Tenants must pay to continue the tenancy	\$9,365.28

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$17,737.15
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$10,135.00
Total amount owing to the Landlord	\$7,788.15
Plus daily compensation owing for each day of occupation starting January 6, 2023	\$62.05 (per day)